
(2003) 08 AP CK 0065
In the Andhra Pradesh High Court
Case No : SA No. 457 of 1992

Karaka China Ramayamma	Vs	APPELLANT
State Government of A.P. and Another		RESPONDENT

Date of Decision : 07-08-2003

Acts Referred:

Andhra Pradesh Land Encroachment Act, 1905 — Section 14, 7
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : (2004) 2 ALD 139 : (2004) 3 ALT 778

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : D. Ramalinga Swamy, for the Appellant; Government Pleader for Civil Supplies and Arbitration, for the Respondent

Judgement

C.Y. Somayajulu, J.—Plaintiff in O.S. No. 262 of 1978 on the file of the Court of Principal District Munsif, Vizianagaram is the appellant in this second appeal.

2. Appellant filed the suit for permanent injunction restraining the respondents from evicting him from Ac.2.17 Gts., of land in S.No. 87/4 of Korlam Village (hereinafter referred as the suit land), contending that the suit land was a part of Vizianagaram estate and that she has been in occupation of the suit land from several years even prior to Vizianagaram estate being taken over under the provisions of the A.P. Estates Abolition Act, and thus acquired the status of a ryot within the meaning of the Estates Abolition Act, and hence is entitled to a ryotwari patta, but the revenue officials of Korlam Village, with a view to cause wrongful loss to her, served a notice u/s 7 of the A.P. Land Encroachment Act describing her as an encroacher in respect of the suit land, and so the respondents may be restrained from evicting her under the provisions of the Land Encroachment Act from the suit land. On behalf of respondents second respondent filed his written statement contending that the suit land is registered as waste dry land as per the settlement record and is not a tyoti land as contended by the appellant, and that Korlam is a part of Vizianagaram estate,

which was taken over by the Government on 7.9.1949 and that settlement rights were introduced in the said village on 1.7.1958 and ever since then the suit land is treated as a Banjara land and was lying vacant, and after the appellant encroached into the suit land she was evicted by the Revenue Inspector on 7.7.1978 under the provisions of the Land Encroachment Act and the suit land was divided into plots and was granted pattas to Harijans. At the time when the appellant made the encroachment, she paid encroachment fees to the Government and so appellant cannot contend that she is the owner of the suit land. On the basis of the above pleadings, the Trial Court settled as many as nine issues for trial. In support of her case, appellant examined herself as P.W.1 and marked Exs.A.1 to A.11. On behalf of respondents, three witnesses were examined as DWs.1 to 3 and Exs.B.1 to B.7 were marked. The Trial Court held that the appellant is in possession of the suit land on the date of the suit and that the suit is not bad for non-joinder of parties and that eviction proceedings are not final and that appellant is not estopped from contending that she has right in the suit land though she paid B-Memo charges, and that the suit is not barred under the provisions of Section 14 of the Land Encroachment Act, and decreed the suit. On appeal by the respondents in A.S. No. 7 of 1987, the Additional District Judge, Vizianagaram reversed the findings of the Trial Court and dismissed the suit on the ground that the suit is not maintainable. Hence this second appeal by the plaintiff.

3. The main contention of the learned Counsel for the appellant is that the lower Appellate Court was in error in reversing the well-considered findings of the Trial Court. It is contended that since the appellant is in possession of the suit land on the date of filing of the suit and since the evidence of the appellant clearly establishes that she has been in long standing possession of the suit land, the respondents cannot evict the appellant by taking recourse to the provisions of the Land Encroachment Act. The contention of the learned Government Pleader is that the suit for injunction simplicitor is not maintainable in view of Section 14 of the Land Encroachment Act, and the well-considered judgment of the lower Appellate Court needs no interference in this second appeal.

4. The contention of the appellant that she has been in continuous possession of the suit land even by the date of coming into force of the Estates Abolition Act, prima facie, cannot be accepted, because the appellant described herself as a person aged 30 years in the plaint, which was filed on 26-6-1978. Some provisions of the Estates Abolition Act came into force on 2-4-1949. The specific case of the respondents is that Vizianagaram estate was taken over on 7-9-1949. So, even as per the description of the appellant in the plaint, she would be aged about one year by the date of coming into force of the Estates Abolition Act. So, her contention that she has been in long standing possession of the suit land from several years prior to the coming into force of the Estates Abolition Act, prima facie, cannot be taken to be true. Be that as it may, except Ex.A3, which is a cist receipt dated 28-10-1977, the other tax receipts produced by the appellant relate to the period subsequent to the filing of the suit. Even Ex.A3 does not

relate to payment of land revenue in respect of the suit land. Exs.A1 and A2 are notices issued to the appellant under the Land Encroachment Act. Thus, there is no documentary evidence whatsoever to establish that the appellant was in possession of the suit land at any time prior to the filing of the suit or at least on the date of filing of the suit. Exs,A4 to A6 are all of the years 1985 and 1986; Exs.A7 to A10 relate to 1983, 1981 and 1978, which are subsequent to the filing of the suit. It is well known that documents which came into existence subsequent to filing of the suit cannot be relied on for determining the rights of parties on the date of suit. Thus, except the ipse dixit of the appellant, there is no other evidence on record to show that she is in long standing possession of the suit land by the date of issuance of notices under A.P. Land Encroachment Act by the respondents.

5. If the petitioner (sic appellant) felt that she is entitled to a patta under the provisions of the Estates Abolition Act, her remedy is not by way of filing a suit for injunction against the Government, but she ought to have approached the Settlement Officer under the provisions of the Estates Abolition Act and sought for a patta. It is not her case that she approached the settlement officer for issuance of patta. The question as to whether the appellant is entitled to grant of patta or not cannot be decided by a Civil Court because it is exclusively within the purview of Settlement Officer appointed under the provisions of Estates Abolition Act. Therefore, even assuming that the appellant had some semblance of right in the suit land, it is of no significance because she did not even produce a scrap of paper to show that the Settlement Officer recognized her as a person in possession of the suit land at any point of time.

6. Section 14 of the Land Encroachment Act ousts the jurisdiction of the Civil Court for granting an injunction except in cases where declaration of title in respect of the land in respect of which notice was issued is sought. It is not in dispute that the suit is filed immediately after the appellant is served with Exs.A.1 and A.2 notices by the Government. Since the appellant is not seeking a declaration of her title to the suit land, and since there is nothing on record to show that the appellant has been in long standing possession of the suit land prior to issuance of Exs.A.1 and A.2 notices by the respondents, in view of Section 14 of the Land Encroachment Act, the suit for mere injunction filed by the appellant is not maintainable, and so I find no grounds to interfere with the decision of the lower Appellate Court that the suit is not maintainable.

7. In the result, the second appeal is dismissed, but in the circumstances without costs.